

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

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|--------------------------|---|---|
| ABDU JACKSON, |) | |
| Plaintiff, |) | C.A. No. 23-272 Erie |
| |) | |
| v. |) | District Judge Susan Paradise Baxter |
| |) | Chief Magistrate Judge Richard A. Lanzillo |
| WELLPATH, et al., |) | |
| Defendants. |) | |

MEMORANDUM ORDER

Plaintiff Abdu Jackson, a former inmate incarcerated at the State Correctional Institution at Forest in Marienville, Pennsylvania (“SCI-Forest”),¹ brings this *pro se* civil rights action pursuant to 42 U.S.C. § 1983 against the following health care providers at SCI-Forest: Wellpath, Dr. David Smith (“Smith”), CRNP Leslie (“Leslie”), CRNP Sharp (“Sharp”), and CRNP Strick (“Strick”). The action was referred to Chief United States Magistrate Judge Richard A. Lanzillo for report and recommendation in accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrate Judges.

Plaintiff’s complaint alleges that Defendants were deliberately indifferent to his serious medical needs in violation of his rights under the eighth amendment to the United States Constitution. Plaintiff also appears to assert a state law claim of medical malpractice against all Defendants. The complaint was served upon Defendants Wellpath, Leslie, and Sharp (hereinafter referred to collectively as “Wellpath Defendants”), but has never been served upon Defendants

¹
Plaintiff alleges that he was granted parole in September 2023. (ECF No. 6 at p. 1).

Smith and Strick.²

On February 13, 2024, the Wellpath Defendants filed a motion to dismiss Plaintiff's claims against them for failure to state claims upon which relief may be granted. [ECF No. 16]. The motion was later supplemented by the Wellpath Defendants on April 16, 2024 [ECF No. 30]. Plaintiff never filed a response to the motion, despite Judge Lanzillo's issuance of a show cause Order requiring a response by May 15, 2024 [ECF No. 33].

On August 7, 2024, Judge Lanzillo issued a Report and Recommendation ("R&R") recommending that the Wellpath Defendants' motion to dismiss be denied as to Plaintiff's Eighth Amendment deliberate indifference claim against Defendant Leslie, but granted as to Plaintiff's Eighth Amendment claim against Defendants Wellpath and Sharp and Plaintiff's medical malpractice claim against the Wellpath Defendants, without prejudice to Plaintiff's right to amend such claims within twenty days. [ECF No.37]. The R&R recommends further that all claims against Defendant Strick and Plaintiff's Eighth Amendment claim against Defendant Smith be dismissed with prejudice, pursuant to 28 U.S.C. §§ 1915(e)(2)(B) and 1915A(b); however, Plaintiff's medical malpractice claim against Defendant Smith should remain unaffected. Objections to the R&R were due to be filed by August 26, 2024; however, no timely objections have been received by the Court.

Thus, after *de novo* review of the documents in this case, together with the report and recommendation, the following order is entered:

AND NOW, this 28th day of August, 2024,

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On May 16, 2024, Chief Magistrate Judge Lanzillo issued a show cause Order requiring Plaintiff to provide updated service forms for Defendants Smith and Strick by May 28, 2024, or suffer dismissal of his claims against said Defendants. [ECF No. 36]. Plaintiff failed to comply with this Order.

IT IS HEREBY ORDERED that the motion to dismiss filed by Defendants Wellpath, Leslie, and Sharp [ECF No. 16] is GRANTED in part and DENIED in part, as follows:

1. The motion to dismiss Plaintiff's Eighth Amendment claim against Defendant Leslie is DENIED and such claim shall be allowed to proceed.
2. The motion to dismiss Plaintiff's Eighth Amendment claim against Defendants Wellpath and Sharp, and Plaintiff's medical malpractice claim against Defendants Wellpath, Leslie, and Sharp is GRANTED and such claims are DISMISSED, without prejudice to Plaintiff's right to file an amended complaint to correct the deficiencies of such claims within twenty (20) days of the date of this Order. In the event Plaintiff fails to file a proper amended complaint within such time, the dismissal of all such claims will be converted to a dismissal with prejudice without further notice.

IT IS FURTHER ORDERED that all of Plaintiff's claims against Defendant Strick and Plaintiff's Eighth Amendment claim against Defendant Smith are DISMISSED with prejudice pursuant to 28 U.S.C. §§ 1915(e)(2)(B) and 1915A(b); however, Plaintiff's medical malpractice claim against Defendant Smith will remain unaffected. The Clerk is directed to terminate Defendant Strick from this case.

The report and recommendation of Chief Magistrate Judge Lanzillo, dated August 7, 2024 [ECF No. 37], is adopted as the opinion of this Court.


SUSAN PARADISE BAXTER
United States District Judge

cc: The Honorable Richard A. Lanzillo
Chief United States Magistrate Judge

All parties of record